

Internal Revenue Service, Treasury

§ 11.401(a)-11

(c) *Method of making election.* A taxpayer may make an election described in paragraph (b) of this section by filing a statement before June 28, 1975, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules with respect to taxpayers filing consolidated returns, see §1.1502-77(a) of part 1 of this chapter. The statement shall contain the following information: (1) The name, address, and taxpayer identification number of the taxpayer, and (2) the election which the taxpayer is making under paragraph (b) of this section. If a taxpayer is electing flow-through under section 46(f)(3), the statement shall also contain a written recitation that the election is made at the taxpayer's own option and without regard to any requirement imposed by an agency described in section 46(c)(3)(B) having jurisdiction over the taxpayer. The recitation shall be verified by a written declaration that it is made under the penalties of perjury.

(Secs. 46(f) and 7805 of the Internal Revenue Code of 1954 (85 Stat. 503, 68A Stat. 917; 26 U.S.C. 46, 7805))

[T.D. 7360, 40 FR 25472, June 16, 1975]

§ 9.2 [Reserved]

§ 9.3 Temporary TRASOP requirements for 1-percent additional investment credit.

The provisions listed in §1.46-8 (a)(4) (i)-(ix) (Income Tax Regulations) are deemed effective only as temporary regulations under this section.

(Sec. 301(d)(2)(C) and (10) of the Tax Reduction Act of 1975 and sec. 7805 of the Internal Revenue Code of 1954 (89 Stat. 38, 68A Stat. 917 (26 U.S.C. 7805)))

[T.D. 7589, 44 FR 4145, Jan. 16, 1979; 44 FR 6715, Feb. 2, 1979]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec.

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- 11.415(c)(4)-1 Special elections for section 403(b) annuity contracts purchased by educational institutions, hospitals and home health service agencies.

AUTHORITY: Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805), unless otherwise noted.

§ 11.401(a)-11 Qualified joint and survivor annuities.

(a) *In general*—(1) *General rule.* A trust, which is a part of a plan providing for the payment of benefits in any form of a life annuity (*i.e.*, an annuity requiring survival of the participant or his spouse as a condition for payment), shall not constitute a qualified trust under section 401(a)(11) and this section unless such plan provides that these benefits must be paid in a form having the effect of a qualified joint and survivor annuity. Therefore, any benefits which may be paid in any form of a life annuity must be paid in a form having the effect of a qualified joint and survivor annuity unless the participant makes the election, described in paragraph (c) of this section, not to receive benefits in this form. A plan will not fail to meet the requirements of section 401(a)(11) and this section merely because it provides that the spouse of a deceased participant may elect to have benefits paid in a form other than a qualified joint and survivor annuity. Section 401(a)(11) and this section shall apply only in the

case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to section 411(e)(2). Without regard to the election provided under paragraph (d)(3) of this section, unless an election has been made under paragraph (c) of this section, a plan to which this section applies must provide that a survivor annuity shall be payable on the death of an active participant after normal retirement age.

(2) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. The X Corporation Defined Contribution Plan was established in 1960. As in effect on January 1, 1974, the plan provided that, upon his retirement, a participant could elect to receive the balance of his individual account in the form of (1) a lump-sum cash payment, (2) a lump-sum distribution consisting of X Corporation stock, (3) five equal annual cash payments, (4) a life annuity, or (5) a combination of options (1) through (4). The plan also provided that, if a participant did not elect another form of distribution, the balance of his individual account would be distributed to him in the form of a lump-sum cash payment upon his retirement. Assume that section 401(a)(11) and this section first become applicable to the plan as of its plan year beginning January 1, 1976, with respect to persons who were active participants in the plan on such date (see paragraph (h) of this section). Unless the X Corporation Defined Contribution Plan either discontinues the life annuity payment option or is amended to provide that the balance of a participant's individual account will be paid to him in a form having the effect of a qualified joint and survivor annuity unless the participant elects another form of benefit payment, the trust established under the plan will fail to qualify under section 401(a).

(b) *Definitions.* As used in this section—

(1) *Qualified joint and survivor annuity.* The term “qualified joint and survivor annuity” means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is neither (i) less than one-half of, nor (ii) greater than, the amount of the annuity payable during the joint lives of the participant and his spouse. A qualified joint and survivor annuity must be at least the actuarial equivalent of the normal form of annuity or any optional form of benefit offered under the plan. Equivalence may be de-

termined, on the basis of consistently applied reasonable actuarial factors, for each participant or for all participants or reasonable groupings of participants, if such determination does not result in discrimination in favor of employees who are officers, shareholders, or highly compensated. An annuity is not a qualified joint and survivor annuity if payments to the spouse of a deceased participant are terminated because of such spouse's remarriage.

(2) *Annuity starting date.* The term “annuity starting date” means the first day of the first period with respect to which an amount is received as an annuity, whether by reason of retirement or by reason of disability.

(3) *Earliest retirement age.* The term “earliest retirement age” means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, including any benefit the participant is entitled to receive on account of disability.

(c) *Election not to take joint and survivor annuity form—(1) In general.* A plan shall not be treated as satisfying the requirements of this section unless each participant has the right to elect in writing not to take a joint and survivor annuity during a reasonable period before the annuity starting date. However, if a plan provides that a qualified joint and survivor annuity is the only form of benefit payable under the plan, no election need be provided.

(2) *Information to be provided to the participant.* (i) The plan administrator must furnish to the participant a written notification, in nontechnical terms, of the availability of the election provided by this paragraph, within a reasonable amount of time after the first day of the election period. This notification shall also inform the participant of the availability of the information specified in subdivision (ii) of this subparagraph.

(ii) The plan administrator must furnish to the participant a written explanation in nontechnical language of the terms and conditions of the joint and survivor annuity and the financial effect upon the participant's annuity (in terms of dollars per annuity payment)

of making an election under this paragraph. This explanation must be provided to the participant within a reasonable amount of time from the date of the participant's request during the election period.

(3) *Form of election.* The election shall be in writing and clearly indicate that the participant is electing to receive his benefits under the plan in a form other than that of a joint and survivor annuity.

(4) *Election is revocable.* This election may be revoked in writing during the election period. After an election is revoked another election under this paragraph may be made during the election period.

(d) *Plans providing for early retirement—(1) Period during which qualified joint and survivor annuity not required.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(i) The date the employee reaches the earliest retirement age under the plan (as defined in paragraph (b)(3) of this section), or

(ii) The first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(2) *Period during which qualified joint and survivor annuity required.* (i) If a participant terminates employment and begins to receive retirement benefits during the period described in subparagraph (1) of this paragraph, he and his spouse must receive, after the termination of such period (or after the date such period would have terminated if the participant had survived), benefits having the effect of a qualified joint and survivor annuity, unless the participant has made an election under paragraph (c) of this section.

(ii) If a participant terminates employment and begins to receive retirement benefits after the period de-

scribed in subparagraph (1) of this paragraph, he and his spouse must receive benefits having the effect of a qualified joint and survivor annuity, unless the participant has made an election under paragraph (c) of this section.

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example. A plan which provides a benefit in the form of a life annuity also provides that a participant may retire before the normal retirement age of 65 and receive a benefit, if he has completed 30 years of service. A, an employee, became a participant at the age of 18. A retires and begins to receive retirement benefits at the age of 48. Unless A otherwise elects, the plan must provide a qualified joint and survivor annuity to A and his spouse after A reaches age 55 (the later of the earliest retirement age (age 48) or 10 years before normal retirement age (age 55)) or after the date A would have reached age 55, if he had survived. The survivor annuity paid to the spouse must satisfy the requirements of paragraph (b)(1) of this section. The plan may, but is not required to, provide the survivor annuity before age 55 if the participant dies between age 48 and age 55.

(3) *Election of survivor annuity—(i) In general.* (A) A plan described in subparagraph (1) of this paragraph does not meet the requirements of paragraph (a) of this section unless, under the plan, a participant may elect, during a reasonable period, a survivor annuity to be payable on his death during the period beginning on the date on which the period described in subparagraph (1) of this paragraph ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period. Breaks in service during that period will neither invalidate a previous election or revocation nor prevent an election from being made or revoked during the election period.

(B) If a plan provides that a survivor annuity is the only form of benefit payable under the plan, no election need be provided.

(ii) *Example.* The provisions of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. A plan which provides a life annuity also provides that a participant may retire before the normal retirement age of 65

and receive a benefit, if he has completed 30 years of service. Under this plan, an employee who became a participant at the age of 18 will be eligible to receive retirement benefits at the age of 48. This plan must allow a participant who continues his employment to elect a survivor annuity, described in subdivision (v) of this subparagraph, to be payable on the death of the participant if death occurs after age 55 (the later of the date the participant reaches the earliest retirement age (age 48) or 10 years before normal retirement age (age 55)) but before the date the participant reaches normal retirement age (age 65).

(iii) *Information to be provided by plan administrator.* (A) The plan administrator must furnish to the participant a written notification in nontechnical terms of the availability of the election provided by this subparagraph, within a reasonable amount of time after the first day of the election period. This notification shall also inform the participant of the availability of the information specified in subdivision (iii)(B) of this subparagraph.

(B) During the election period, the plan administrator must furnish to the participant, within a reasonable amount of time from the date of his request, a written explanation in nontechnical language of the terms and conditions of the survivor annuity and the financial effect upon the participant's annuity (in terms of dollars per annuity payment) of an election or of a revocation of an election under this subparagraph.

(iv) *Payments under the survivor annuity.* In order to meet the requirements of this subparagraph, if an election is made, the payments under the survivor annuity must not be less than the payments which would have been made under the joint and survivor annuity to which the surviving spouse would have been entitled if the participant had made the election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period during which an election can be made. For example, if a participant is entitled to a single life annuity of \$100 per month or a reduced amount under a qualified joint and survivor annuity of \$80 per month, regardless of when he makes a valid election under subparagraph (2) of this para-

graph, his spouse is entitled to a payment of at least \$40, but not more than \$80 per month, under the survivor annuity.

(v) *Form of election.* The election shall be in writing and clearly indicate that the participant is electing the joint and survivor annuity form.

(vi) *Election is revocable.* An election under this subparagraph may be revoked in writing during the election period. After an election has been revoked, another election under this subparagraph may be made during the election period. See paragraph (c) of this section, relating to the right to elect not to take the joint and survivor annuity form.

(e) *Marriage requirements.* (1) A plan shall be treated as satisfying the requirements of this section even though it requires the participant and his spouse to have been married to each other on the annuity starting date.

(2) A plan shall be treated as satisfying the requirements of this section even though it provides that the spouse of the participant is not entitled to receive a survivor annuity (whether or not the election described in paragraph (d)(3) of this section has been made) unless the participant and his spouse have been married to each other throughout the 1-year period ending on the date of such participant's death.

(f) *Effect of participant's death on an election or revocation of an election under paragraph (c) or (d)(3).* A plan shall not be treated as not satisfying the requirements of this section merely because the plan contains a provision that any election made under paragraph (c) or (d)(3) of this section and any revocation of any such election does not become effective or ceases to be effective if the participant dies within a period, not in excess of 2 years, beginning on the date of such election or revocation. A plan containing a provision described in the preceding sentence shall not satisfy the requirements of this section unless it also provides that any such election and any revocation of any such election will be given effect in any case in which—

(1) The participant dies from accidental causes,

(2) A failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) Such election or revocation is made before such accident occurred.

(g) *Costs of providing joint and survivor annuity form.* A plan may take into account in any equitable manner consistent with generally accepted actuarial principles applied on a consistent basis any increased costs resulting from providing joint and survivor annuity benefits.

(h) *Application and effective date.* (1) Section 401(a)(11) and this section shall apply to a plan only with respect to plan years to which section 411 (relating to minimum vesting standards) is applicable to the plan.

(2) Section 401(a)(11) and this section shall apply if—

(i) The participant's annuity starting date falls within a plan year beginning after December 31, 1975, and

(ii) The participant was an active participant in the plan on or after the first day of the first plan year beginning after December 31, 1975.

For purposes of this paragraph, the term "active participant" means a participant for whom benefits are being accrued under the plan on his behalf, the employer is obligated to contribute to or under the plan on his behalf, or the employer would have been obligated to contribute to or under the plan on his behalf if any contributions were made to or under the plan.

(Sec. 401(a)(11) of the Internal Revenue Code of 1954, 88 Stat. 935 (26 U.S.C. 401(a)(11)))

[T.D. 7379, 40 FR 45810, Oct. 3, 1975; 40 FR 49326, Oct. 22, 1975]

§ 11.401(a)-19 Nonforfeitable in case of certain withdrawals.

(a) *Application of section.* Section 401(a)(19) and this section apply to a plan to which section 411(a) applies. (See section 411(e) and § 11.411(a)-2 for applicability of section 411.)

(b) *Prohibited forfeitures.*—(1) *General rule.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if, under such plan, any part of a participant's accrued benefit derived from employer contributions is forfeitable solely because a benefit de-

rived from the participant's contributions under the plan is voluntarily withdrawn by him after he has become a 50 percent vested participant.

(2) *50 percent vested participant.* For purposes of paragraph (b)(1) of this section, a participant is a 50 percent vested participant when he has a nonforfeitable right (within the meaning of section 411 and the regulations thereunder) to at least 50 percent of his accrued benefit derived from employer contributions.

(3) *Certain forfeitures.* Paragraph (b)(1) of this section does not apply in the case of a forfeiture permitted by section 411(a)(3)(D)(iii) and § 11.411(a)-4(b)(5)(i) (relating to forfeitures of certain benefits accrued before September 2, 1974).

[T.D. 7387, 40 FR 51421, Nov. 5, 1975]

§ 11.401(b)-1 Certain retroactive changes in plan.

(a) *General rule.* (1) Under section 401(b), a stock bonus, pension, profit-sharing or annuity plan or bond purchase plan which does not satisfy the requirements of section 401(a) on any day solely as a result of a disqualifying provision (as defined in paragraph (b) of this section) shall be considered to have satisfied such requirements on such day if there is adopted during the remedial amendment period (as determined under paragraphs (c) and (d) of this section) with respect to such disqualifying provision an amendment which causes the plan to satisfy all such requirements of section 401(a), 403(a) or 405(a) for the whole of the remedial amendment period (including extension thereof).

(2) This section shall not apply to any disqualifying provision if the remedial amendment period (as determined under paragraphs (c) and (d)(1) of this section determined without regard to paragraph (d)(2) of this section) with respect to such disqualifying provision ends prior to September 2, 1974.

(b) *Disqualifying provisions.* For purposes of this section, with respect to a plan described in paragraph (a) of this section the term "disqualifying provision" means any provision of—

(1) A plan as adopted,

(2) A plan amendment, or